24

SUPREME COURT OF THE UNITED STATES.

No. ~~881.~~ 246. 1287

WILLIAM S. LONG, PLAINTIFF IN ERROR,

vs.

E. C. KEMBLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 331.

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1 UNITED STATES OF AMERICA
Northern district of California:

Pleas before the judges of the circuit court of the United States in and for the northern district of California, at the court-house, in the city of San Francisco, at the regular June term, 1864.

Northern District of California, ss:

Be it remembered, that at the regular June term, 1864, before the Hon. Stephen J. Field, associate justice of the U. S. Supreme Court, and Hon. Ogden Hoffman, U. S. district judge, at the court-house, in the city of San Francisco, came E. C. Kemble, by his counsel, George Cadwallader, esq., and brought into court before the aforesaid judges thereof his certain complaint or declaration against W. S. Long, defendant of a plea of trespass and ejectment; which said complaint was filed on the 8th day of June, A. D. 1864, and follows in these words, that is to say:

2 *Complaint.*

In the circuit court of the United States for the districts of California, northern district.

E. C. KEMBLE, plaintiff,
vs.
W. S. LONG, defendant.

E. C. Kemble, the above-named plaintiff, by Geo. Cadwallader, his attorney, complains against W. S. Long, the above-named defendant, and for cause thereof shows unto the hon. court as follows:

3 1. That the plaintiff is now, and for several years past has been, a resident and a citizen of the State of New York, and that the defendant is and has been a resident and citizen of the State of California.

2. That plaintiff, on the 15th day of April, 1864, was the owner in fee simple and in the possession and entitled to the possession of the following described premises, situated, lying, and being in the town of Red Bluffs, of the county of Tehama, in the State of California, and known, designated, and described upon the map or plat of said town of Red Bluffs as lots number one, two, three, four, five, and six, in block number forty.

3. That plaintiff being such owner of such premises and in the pos-
4 session thereof, and entitled to the possession of the same, the said defendant, W. S. Long, afterwards, to wit, upon the first day of May, 1864, wrongfully entered into such premises, and ousted plaintiff therefrom, and ever since and now unlawfully withholds from the plaintiff the possession thereof, to his damage in the sum of two hundred dollars.

4. That the value of said premises is the sum of twenty-two hundred dollars.

5. Wherefore plaintiff prays judgment against said defendant for the possession of said premises, and for the costs of this suit.

GEO. CADWALLADER,
Attorney for plaintiff.

Residence, Sacramento, California. Dated June 6th, 1864.
5 Endorsed: Filed June 8th, 1864.

HENRY C. HYDE, *Clerk.*

6 And afterwards, to wit, on the 20th day of June, in the year 1864, comes the defendant, W. S. Long, by his attorney, R. C. Clark, and files his answer in the words and figures following, to wit:

Answer.

In the circuit court of the United States for the districts of California, northern district.

E. C. KEMBLE }
vs. }
W. S. LONG. }

Now comes the said def't., W. S. Long, and for answer to the complaint filed herein against him denies generally and specifically each and every allegation therein contained, and having fully answered asks to be hence dismissed with his costs.

W. S. LONG, *in pro. per.*

Residence, Red Bluff, Cal.

Endorsed: Filed June 20th, 1864.

HENRY C. HYDE, *Clerk.*

7 And afterwards, to wit, on the 20th day of June, A. D. 1864, came the parties to said cause, by their said counsel, and filed an agreed statement of facts, in the words and figures following, to wit:

Agreed statement of facts.

In the circuit court of the United States for the district of California, northern district.

E. C. KEMBLE, plaintiff, }
vs. } Agreed statement of facts.
W. S. LONG, defendant. }

1. That the plaintiff is, and for several years past has been, a citizen and a resident of the State of New York, and that the defendant is a citizen and resident of the State of California.

8 2. That the defendant was, at the commencement of this action, and is now in the possession of the premises described in plaintiff's complaint, which are of the value of twenty-two hundred dollars.

3. That prior to the public surveys of the United States, one M. L. Cavert, being the holder of a school land warrant for 320 acres of land, issued by the State of California under its act of May 3d, 1852, entitled "An act to provide for the disposal of the 500,000 acres of land granted to this State by act of Congress passed April 4th, 1841," on the 14th day of June, 1853, and in accordance with the provisions of said act located the same upon those parcels of land now known as the east half of the southeast quarter of section 20, and the north half of the northwest quarter of section 29, in township 27 north, range three west, Mt. Diablo meridian, containing 320

9 acres of land, and which are situate in the county of Tehama, of the State of California. That the premises in dispute form part of the land embraced in said location.

4. That at the time of the location of said land warrant, the land covered by it was vacant and unoccupied, belonging to the United States. That subsequently, in the year 1854, a town was laid out and built upon said premises, called Red Bluffs. That on the 31st day of March, 1855, this land, as well as the remainder of the township, was surveyed by the United States, and the plat thereof filed in the office of the register of the land office of the district in which said lands were situate, and that thereupon the said officer was notified of the said State selection made by the said M. L. Cavert on the 14th day of June, 1853, by his assignor, one J. G. Doll, who, by purchase,

had succeeded to all of said M. L. Cavert's interest in the location and in the land thereby covered.

10 5. That on the 30th day of June, 1858, the President of the United States, by his proclamation, No. 614, ordered the tract of land covered by the said State selection of M. L Cavert, as well as the lands surrounding it, to be offered for sale on the 14th day of Feb'y, 1859.

6. That in the year 1858 the locating agent of the State of California applied to the register of the United States land office for the Marysville land district, in which said lands were situate, for the approval of the selection and location made as aforesaid by the said M. L. Cavert on the 14th day of June, 1853, and that the said register of the said U. S. land office, on the 13th day of February, 1859, approved the same, and that on the 22d day of June, 1859, the State of California issued to J. G. Doll, assignee as aforesaid of said M. L. Cavert, under and in conformity with an act

11 of her legislature, approved April 16th, 1859, entitled "An act to provide for the issuance of patents to lands located with State school warrants, and for lands purchased under the act of April 23d, 1858," a patent for the said premises.

7. That from the year 1854 to this time the said town of Red Bluffs has existed, but has never had any corporate or municipal organization. That in the year 1862, the county judge of Tehama County applied to the register of the United States land office, in the said Marysville land district, for leave to enter, as a town site, said land under the congressional law of May 23d, 1844, entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances"

That the said register of the said land office denied said application, for the reason that his said office in the year 1859 had approved the State section of said lands, as aforesaid; that thereafter, by the direction of the Commissioner of the General Land Office, the said applicant, under the

12 congressional act of May 23d, 1844, was authorized to contest the said selection and location of the said M. L. Cavert and of his assignee, J. G. Doll, and on the trial of said contest the facts stated in the 2d, 3d, 4th, 5th, 6th, and 7th articles hereof were proved and went before said Commissioner of the General Land Office for decision thereon; that said officer on the 4th day of January, 1864, rendered his opinion, and therein ordered the said State selection of M. L. Cavert, assignee to said J. G. Doll, as aforesaid, to be cancelled, and authorized the entry of the land on the application of the county judge, under the provisions of the said congressional act of May 23d, 1844, and gave as reason therefor—

1. That the said State selection of M. L. Cavert, made on the 14th day of June, 1853, was void, because the same was made before the public surveys.

2. That said State selections did not become valid upon the making of the public surveys in 1855, because at that time the land was the site of

13 the town of Red Bluff, and as such was reserved from sale by the laws of Congress.

3. That the failure of the county judge to apply for or enter the land before the land sales in 1859, did not waive that right, or cause the State selection of M. L. Cavert to become valid.

8. That the premises described in plaintiff's complaint are situate within the actual limits of the town of Red Bluffs, of which place the defendant is a resident. That the title of J. G. Doll to the premises in the complaint described was, at the time therein stated, by an appropriate conveyance, vested in plaintiff.

Stipulation.

It is hereby stipulated between the parties hereto that the foregoing

agreed statement of facts is correct, and that the same shall con-
14 stitute the facts of the case, and as such be submitted to the court for its opinion and judgment.

GEO. CADWALLADER,
Att'y for plaintiff.
W. S. LONG, *in pro. per.*

Endorsed: Filed June 20, 1864.

HENRY C. HYDE, *Clerk.*

15 And afterwards, to wit, on the 20th day of June, A. D. 1864, came the said parties by their said counsel and file their stipulation in the cause in the words and figures following, to wit:

Stipulation waiving jury.

U. S. circuit court, northern district of Cal.

E. C. KEMBLE }
v.
W. S. LONG. }

It is hereby stipulated between the parties to this cause that said cause be tried before the court sitting without a jury, a jury being hereby expressly waived.

Dated San Francisco, June 20, 1864.

CADWALLADER, *Att'y for pl'ff.*
R. C. CLARK, *Att'y for def't.*

Endorsed: Filed June 20, 1864.

HENRY C. HYDE, *Clerk.*

16 *Proceedings in court June* 20, 1864.

And afterwards on the same day the following was entered of record in said cause.

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Monday, the 20th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the United States Supreme Court; Hon. Ogden Hoffman, U. S. district judge.

E. C. KEMBLE }
v. } At common law.
W. S. LONG. }

And now, at this day, on consent of Messrs. Geo. Cadwallader for plaintiff, and Robert S. Clark for defendant, ordered that this cause be, and it is hereby, submitted to the court upon the agreed statement of facts now filed, and briefs of counsel to be filed within ten days from this date.

17 And afterwards, to wit, on the 27th day of June, A D. 1864, come the parties by their counsel and file their supplement agreed statement of facts in the said cause in the words and figures following, to wit:

Supplemental agreed statement of facts.

In the circuit court of the United States for the district of California, northern district.

E. C. KEMBLE, plaintiff, }
vs.
W. S. LONG, defendant. }

1. That the records of the office of surveyor general of the State of Cali-

fornia, who is also register of the State land office, show that up to the 20th day of November, 1863, the State had, under the 8th section of the
18 congressional act of September 4th, 1841, selected and located prior to the public surveys of the United States in the State of California, two hundred and forty-two thousand five hundred and twenty-eight acres of land.

2. That in the town of Red Bluffs the whole number of lots occupied amount to nine hundred and eighty, of which nine hundred and fifty-five are occupied by persons who have purchased the same from either M. L. Cavert or J. G. Doll.

We hereby stipulate that the foregoing may be considered by the court as a supplemental agreed statement of facts in the above-entitled cause.

GEO. CADWALADER,
Att'y for plaintiff.
ROB'T C. CLARK, *Att'y for def't.*

Endorsed: Filed June 27, 1864.

H. C. HYDE, *Clerk.*

19 And afterwards, on the 26th day of September, A. D. 1864, the court files its findings in said cause in the words and figures following, to wit:

Findings of court.

Circuit court U. S., tenth circuit.

E. C. KEMBLE
v.
W. S. LONG.

Upon the facts admitted in this case by the parties in their agreed statement and supplemental statement on file, the court finds as a conclusion of law that the plaintiff is entitled to the possession of the premises described in the complaint. Judgment in favor of the plaintiff for the possession of said premises, with cost, is therefore ordered.

FIELD, *J.*

Dated San Francisco, September 26, 1864.

20 And afterwards, to wit, on the 26th day of September, A. D. 1864, the following proceedings were entered of record in said cause:

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Monday, the 26th day of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the United States Supreme Court, Hon. Ogden Hoffman, U. S. dist. judge.

Order for judgment.

E. C. KEMBLE
vs.
W. S. LONG.

And now the court files its findings herein the words following, to wit:

Upon the facts admitted in this case by the parties in their agreed statement and supplemental statement on file, the court finds as a conclusion of law that the plaintiff is entitled to the possession of the premises described in the complaint. Judgment in favor of the plaintiff for the possession of said premises with costs, is therefore ordered.

21 *Judgment.*

And on the first day of October, A. D. 1864, judgment was entered in said cause in words, terms, and figures as follows, to wit:

In the U. S. circuit court, tenth circuit, northern district of California, June term, A. D. 1864.

E. C. KEMBLE }
vs. }
W. S. LONG. }

This cause coming on to be heard on the 20th day of June, A. D. 1864, in its regular order on the calendar, and a jury trial having been waived by the within stipulation of the parties on file herein, the same was, by consent of counsel for the respective parties, submitted to the court upon the agreed statement of facts filed on file, and briefs of counsel to be filed within ten days.

22 And now on the 26th day of September, A. D. 1864, after due deliberation had in the premises, the court files its findings, and orders judgment accordingly, in the words following, to wit:

Upon the facts submitted in this case by the parties in their agreed statement and supplement statement on file, the court finds as a conclusion of law that the plaintiff is entitled to the possession of the premises described in the complaint. Judgment in favor of the plaintiff for the possession of said premises, with costs, is therefore ordered.

Wherefore, by reason of the law and of the premises, it is ordered and adjudged that the said plaintiff, E. C. Kemble, do have and recover of and from the said defendant, W. S. Long, the possession of the said premises described in the complaint in this action, to wit: the following described premises, situate, lying, and being in the town of Red Bluffs, of the county of Tehama, in the State of California, and known, designated, and described upon the map or plat of said town of Red Bluffs as lots numbered one, two, three, four, five, and six, in block number forty.

And it is further ordered and adjudged that the said plaintiff do have and recover of and from the said defendant his costs in this action, taxed at .

Judgment entered this 1st day of October, A. D. 1864.

GEORGE C. GORHAM, *Clerk.*

23 And afterwards, to wit, on the tenth day of October, A. D. 1864, upon the prayer of the said defendant, W. S. Long, the following writ of error was duly issued in this cause, in the words following, to wit:

24 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the tenth circuit, and northern district of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between E. C. Kemble, pl'ff, and W. S. Long, def't, a manifest error hath happened, to the great damage of the said W. S. Long, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then
25 and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, the 18th day of April, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

In testimony whereof, the clerk of the circuit court of the United States for the northern district of California hath hereunto set his hand
[SEAL.] and affixed the seal of said circuit court this tenth day of October, A. D. 1864.

GEORGE C. GORHAM,
Clerk U S. circuit court, tenth circuit, Nor. Dist. California.

26 And afterwards, to wit, on the tenth day of October, in the year of our Lord one thousand eight hundred and sixty-four, the following citation on the aforesaid writ of error was duly issued by the judge of said court, in the words following, to wit:

27 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To E. C. Kemble, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the tenth circuit and northern district of California, wherein W. S. Long is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stephen J. Field, one of the justices of the said Supreme Court, this tenth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

STEPHEN J. FIELD, *Circuit Judge.*

Endorsed: Due service of the within citation is hereby admitted this 10th day of October, 1864.

GEO. CADWALADER,
Att'y for pl'ff, Kemble.

Also endorsed: Filed Oct. 10th, 1864.

GEO. C. GORHAM, *Clerk.*

28 *Clerk's certificate.*

In the circuit court of the United States in and for the northern district of California, June term, 1864.

E. C. KEMBLE
vs.
W. S. LONG. } At common law.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I, George C. Gorham, clerk of the circuit court of the United States in

and for the northern district of California, do hereby certify that the foregoing 26 pages contain a full, correct, and faithful transcript of the record of the proceedings in the above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the court-house, in the city of San Francisco, this 29th [SEAL.] day of October, A. D. 1864, and of the independence of the United States the eighty-ninth year.

GEO. C. GORHAM,
Clerk U. S. circuit court, Nor. Dist. California.

Filed December 8, 1864.